



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FWP/170635

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 08, 2015, under Wis. Admin. Code § HA 3.03(4), to review a decision by the Waupaca County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on January 21, 2016, at Waupaca, Wisconsin.

The issue for determination is whether the Waupaca County Department of Social Services (the agency) correctly ended the Petitioner's FoodShare benefits, effective December 1, 2015.

NOTE: The record was held open until the end of the day to give the agency an opportunity to submit a copy of the FSET referral letter, dated August 10, 2015, and copy of the informational letter. The agency submitted a fax packet, with a note indicating that the One-Time Rolling Information Letter was not saved to the ECF data base. The fax packet also included a copy of an August 10, 2015 referral letter. The fax packet has been marked as Exhibit 23 and entered into the record.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED], Lead Economic Support Specialist  
Waupaca County Department of Social Services  
811 Harding Street  
Waupaca, WI 54981-2087

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Waupaca County.
2. Petitioner completed a renewal on August 7, 2015. (Testimony of Petitioner; Exhibit 18)
3. At the time of the renewal, the Petitioner provided an address in [REDACTED]. (Testimony of Petitioner)
4. On or about August 9, 2015, the Petitioner stopped staying at the [REDACTED] address, but did not report this change to the agency. (Testimony of Petitioner)
5. On August 10, 2015, the agency sent the Petitioner letter indicating that he had been referred to the FSET agency, incorrectly indicating that his time limited benefits would be beginning in August 2015 –they actually began in September 2015. (Exhibits 21 and 23)
6. On August 11, 2015, the FSET Office sent the Petitioner an appointment letter, scheduling an appointment for two days later, August 13, 2015. The notice was sent to the Petitioner at the [REDACTED] address. (Exhibit 6)
7. On August 17, 2015, the FSET Office sent the Petitioner an appointment notice, scheduling an appointment for August 25, 2015, to the [REDACTED] address. (Exhibit 7)
8. On August 21, 2015, the agency received the August 11<sup>th</sup> appointment letter, as “Return to Sender, Not Deliverable as Addressed, Unable to Forward”. (Exhibit 19)
9. On August 27, 2015, the FSET Office sent the Petitioner an appointment notice to the [REDACTED] address, for an appointment on September 3, 2015. (Exhibit 8)
10. On September 8, 2015, the agency called the Petitioner to inquire about his address, and was given the Petitioner’s mother’s address and post-office box in [REDACTED]. (Exhibit 18)
11. On September 8, 2015, the FSET Office sent the Petitioner an appointment notice to the [REDACTED] address, for two days later, September 10, 2015. (Exhibit 9)
12. The FSET Office sent the Petitioner appointment notices on September 11, 2015, September 18, 2015, September 25, 2015, October 2, 2015, October 9, 2015, October 21, 2015, October 30, 2015, and November 12, 2015, all to the [REDACTED] address. (Exhibits 10-17)
13. The Petitioner did not check his mail at his mother’s residence and did not attend any of the aforementioned appointments. (Testimony of Petitioner)
14. On November 18, 2015, the agency sent the Petitioner a notice, indicating that his FoodShare benefits would be ending on December 1, 2015, because he exhausted his three months of time limited benefits. (DHA File)
15. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on December 5, 2015. (Exhibit 1)

**DISCUSSION**

Effective July 1, 2014, the Department of Health services implemented a new policy limiting benefits that childless adults in Kenosha, Racine and Walworth counties may receive. *FoodShare Wisconsin Handbook (FSH) §3.17.1.2* This policy is referred to as the Able Bodied Adults without Dependents (ABAWD) policy and was implemented statewide effective April 1, 2015. *Id.*

Under ABAWD rules, childless, able-bodied adults must either meet ABAWD work requirements or be exempt from the work requirement in order to receive FoodShare benefits. *FSH §3.17.1.1* ABAWDs who are not exempt and who do not meet the work requirement, are only allowed to receive 3 full months of time-limited benefits in a 36-month period. *Id.*

A person is considered a Non-ABAWD, if that person is:

1. Under 18 or age 50 and older,
2. Unable to work,
3. Residing in a FoodShare household with a child under age 18, or
4. Pregnant

*FSH §3.17.1.4*

An ABAWD may be exempt from work requirements if the person is:

1. Determined unfit for employment which includes:
  - a. Receiving temporary or permanent disability benefits
  - b. Mentally or physically unable to work, as determined by the IM agency
  - c. Verified as unable to work by a statement from a health care professional or a social worker.
2. Receiving Unemployment Compensation, or has applied for Unemployment Compensation and is complying with those work requirements;
3. Regularly participating in an alcohol or other drug addiction treatment or rehabilitation program; or
4. A student of higher education who is otherwise eligible for FoodShare (see section 3.15.1)
5. A high school student 18 years of age or older, attending high school at least half time;
6. A primary caregiver of a dependent child under age 6 or an incapacitated person;
7. Receiving Transitional FS benefits; or
8. Meeting the ABAWD work requirement.

*FSH §3.17.1.4*

An ABAWD meets the ABAWD work requirement if one of the following applies:

1. Working a minimum of 80 hours per month. Use converted work hours if paid weekly or bi-weekly;
2. Participating and complying with an allowable work program at least 80 hours per month; \* [includes FSET]
3. Both working and participating in an allowable work program for a combined total of at least 80 hours per month; or
4. Participating and complying with the requirements of a workfare program.

*FSH, §13.17.1.7.*

It is a well-established principle that a moving party, meaning the party that wants to change the status quo, generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). Here, the moving party is the county agency, because it wants to end the Petitioner's FoodShare benefits. Thus, the agency bears the burden to prove it correctly ended the Petitioner's benefits.

Petitioner does not dispute the fact that he is an ABAWD, as defined above, but argues that he was not given adequate notice that he needed to comply with the ABAWD work requirements.

This case is vexing, because the agency sent numerous appointment letters to the Petitioner, and the Petitioner did so very little to keep informed about his FoodShare benefits. It is also vexing, because the agency continued to send notices to the wrong address, even after being notified of the address discrepancy

and because in some instances, the appointment notices were mailed only two days before the scheduled appointment, so Petitioner didn't really have much notice of the appointment and would not have had much chance of keeping the appointment, even if had received the notice. However, at the end, what governs this decision are the established Federal Regulations.

Under 7 CFR §273.7(c)(1), "...The State agency must explain to the individual the pertinent work requirements, the rights and responsibilities of work-registered household members, and the consequences of failure to comply. The State agency must provide a written statement of the above to each individual in the household who is registered for work. A notice must also be provided when a previously exempt individual or new household member becomes subject to a work requirement, and at recertification..." *Emphasis added*

In other words, the State agency must inform a person that they have been determined to be an ABAWD and that they must meet a work requirement. The State agency must also inform that individual that how they can meet the work requirement and what the consequences will be if they fail to meet the work requirement.

In addition, "The State agency is responsible for screening each work registrant to determine whether or not it is appropriate, based on the State agency's criteria, to refer the individual to an E&T program, and if appropriate, referring the individual to an E&T program component. Upon entry into each component, the State agency must inform the participant, either orally or in writing, of the requirements of the component, what will constitute noncompliance and the sanctions for noncompliance." *Emphasis added*  
7 CFR §273.7(c)(2)

In other words, once the State agency determines an individual to be an ABAWD, they must refer the individual to an FSET type program, who must in turn, advise the individual of what he or she must do to comply with FSET program and what constitutes non-compliance with the program and the sanctions for non-compliance.

██████████, the representative for the county agency, testified that on July 11, 2015, that the agency issued the FSET-ABAWD informational mailing, based upon a case comment in Exhibit 18. However, the agency was unable to produce a copy of that informational mailing. (See Exhibit 23) As such, there is no way to know what information the notice contained. Further, the FS ABAWD/FSET Tool Correspondence print out provided by the agency in Exhibit 23 does not make clear whether the informational mailing explained the consequences of failing to comply with the work requirement. In the list of purposes of the notice, it only states the following:

- Explains upcoming changes to FoodShare (FS) for Able Bodied Adults without Dependents (ABAWDs)
- Describes how an ABAWD can meet the work requirement
- Provides a list of exemptions from the work requirement

(Exhibit 23)

Thus, there is no evidence that the agency provided the written notice required under 7 CFR §273.7(c)(1), when it sent the July 11, 2015 informational mailing.

The August 10, 2015 referral letter advised the Petitioner that certain adults without children would only get 3 months of benefits, unless they meet a work requirement and advised him (incorrectly) that his Time Limited Benefits were beginning in August 2015. However, it is undisputed that the referral letter was

sent to the wrong address, because the Petitioner is transient and moved the day before the letter was sent. As such, he again did not get the written notice required under 7 CFR §273.7(c)(1).

The agency became aware of the address issue, when an August 11, 2015 appointment letter was returned to the agency on August 21, 2015. However, the agency never sent out another referral letter. Further, there is nothing in the case comments, indicating that the Petitioner was given information about the FSET program, its requirements, what would constitute non-compliance and the consequences of non-compliance.

The agency argued that the Petitioner was given constructive notice, based upon the eight or so appointment letters that it did send to him at the correct address. However, those letters do not explain the pertinent work requirements, nor does it explain the Petitioner's rights and responsibilities. As such, even though the agency tried really hard to reach out to the Petitioner, they still did not meet the notice requirement under 7 CFR §273.7(c)(1).

Because the agency did not give the Petitioner proper notice of his rights and responsibilities under the ABAWD work requirement, and the consequences of failing to comply with that work requirement, it did not correctly end his benefits on December 1, 2015.

The agency will have to send the Petitioner proper notice, as required under 7 CFR §273.7(c)(1), in order to get the time limited benefits clock to begin ticking.

**NOTE:** This decision should not be construed to mean that the Petitioner has since met the ABAWD work requirement. That is a separate determination that the agency will have to make. If the Petitioner disagrees with that determination, the Petitioner will have to file a NEW appeal.

### **CONCLUSIONS OF LAW**

The agency did not correctly end the Petitioner's benefits on December 1, 2015.

**THEREFORE, it is**

**ORDERED**

That the agency reinstate the Petitioner's FoodShare benefits effective December 1, 2015. The agency shall take all administrative steps to complete this task within ten days of this decision.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

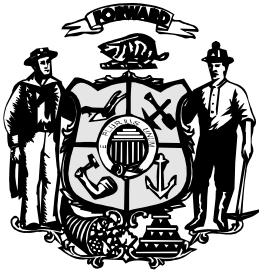
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 25th day of January, 2016

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on January 25, 2016.

Waupaca County Department of Social Services  
Division of Health Care Access and Accountability